

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 10/2/2020
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GABRIEL LOOR, individually and on behalf of	:	
others similarly situated,	:	
	:	
Plaintiff,	:	20-CV-3886 (VEC)
	:	
-against-	:	<u>ORDER</u>
	:	
ATLANTIC CONTRACTING OF YONKERS	:	
INC. (D/B/A ATLANTIC CONTRACTING OF	:	
YONKERS), GOTHAM DRYWALL INC. (D/B/A:	:	
GOTHAM DRYWALL), JOEL ACEVEDO, AND	:	
JOHN FITZPATRICK,	:	
	:	
Defendants.	:	
-----	X	

VALERIE CAPRONI, United States District Judge:

WHEREAS on May 19, 2020, Plaintiff filed the Complaint in this case (Dkt. 1);

WHEREAS on September 25, 2020, this Court ordered Plaintiff to show cause why this case should not be dismissed for failure to serve (Dkt. 12);

WHEREAS on September 25, 2020, Plaintiff's counsel filed a declaration purporting to explain Plaintiff's failure to serve the individual Defendants and file affidavits of service for the corporate Defendants (Dkt. 15); and

WHEREAS the affidavits of service on Defendant Atlantic Contracting of Yonkers Inc. (Dkt. 13) and Defendant Gotham DryWall Inc. (Dkt. 14) indicate that their time to respond to the Complaint has long expired;

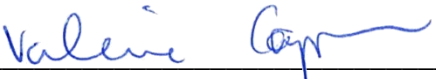
IT IS HEREBY ORDERED THAT Plaintiff's claims against Defendants Joel Acevedo and John Fitzpatrick are DISMISSED without prejudice. Plaintiff's counsel has failed to demonstrate that Plaintiff exercised due diligence in attempting to serve the individual Defendants within the 90 days afforded under Federal Rule of Civil Procedure 4(m), nor has

Plaintiff's counsel demonstrated good cause for the failure to serve. The process server's mistake in attempting service was evident on the face of the affidavit as returned to Plaintiff's counsel in May 2020, and Plaintiff's counsel has failed to provide a satisfactory explanation for counsel's failure to detect this error at the time it occurred. Plaintiff's failure to serve therefore warrants dismissal of Defendants Acevedo and Fitzpatrick from this case.

IT IS FURTHER ORDERED THAT Plaintiff must file a Proposed Order to Show Cause for Default Judgment against Defendants Atlantic Contracting of Yonkers Inc. and Gotham DryWall Inc., a Proposed Default Judgment, and Supporting Papers pursuant to this Court's Individual Practices in Civil Cases, Attachment A, not later than **October 23, 2020**. According to the affidavits of service and Plaintiff's counsel's declaration, the corporate Defendants were served on May 21, 2020; their time to answer the Complaint was thus June 11, 2020.

SO ORDERED.

Date: October 2, 2020
New York, NY



VALERIE CAPRONI
United States District Judge